

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 22, 2023 at 2:00 p.m.

1. <u>23-21823</u> -E-13 <u>DPC</u> -1 1 thru 2	LARRY WALSH Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-18-23 [21]
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**The Court Has Left This Item on the Calendar to Allow for the Event if Debtor and
Creditor Travis Credit Union Have Reached an Agreement for the Valuation of the
Credit Union's Claim Which Can Be Stated on the Record and the Objections Resolved.**

**If No Agreement Has Been Reached, the Court Will Continue The Hearing on This
Objection to the Continued Date for the Hearing on the Motion to Value
– No Appearance Required on August 24, 2023, if the Hearing is to be Continued**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 18, 2023. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The hearing on the Objection to Confirmation of Plan is continued to September 12, 2023 at 2:00 p.m.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

A. Plan relies on Motion to Value Collateral of Travis Credit Union.

Debtor’s Reply

Debtor filed a Reply on August 1, 2023 requesting the Objection be denied.

August 8, 2023 Hearing on the Motion to Value Collateral

The Motion to Value was heard on August 8, 2023. Civil Minutes, Dckt. 40. The court continued the hearing to September 12, 2023 at 2:00p.m. to allow the parties to conduct initial discovery.

The court continues the hearing on the Objection to Confirmation to September 12, 2023 at 2:00 p.m. to be heard in conjunction with the continued Motion to Value Collateral and Secured Claim of Travis Credit Union.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to **September 12, 2023 at 2:00 p.m.**

The Court Has Left This Item on the Calendar to Allow for the Event if Debtor and Creditor Travis Credit Union Have Reached an Agreement for the Valuation of the Credit Union's Claim Which Can Be Stated on the Record and the Objections Resolved.

**If No Agreement Has Been Reached, the Court Will Continue The Hearing on This Objection to the Continued Date for the Hearing on the Motion to Value
– No Appearance Required on August 24, 2023, if the Hearing is to be Continued**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 25, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The hearing on the Objection to Confirmation of Plan is continued to September 12, 2023 at 2:00 p.m.

Travis Credit Union (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Creditor disputes the replacement value of their collateral.
- B. Creditor opposes the interest rate Debtor is proposing.

DISCUSSION

August 8, 2023 Hearing on the Motion to Value Collateral

The Motion to Value was heard on August 8, 2023. Civil Minutes, Dckt. 40. The court continued the hearing to September 12, 2023 at 2:00p.m. to allow the parties to conduct initial discovery.

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 3.00%. Creditor’s claim is secured by a 2018 Dodge Ram. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.25, plus a 1.25% risk adjustment, for a 9.5% interest rate. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

Infeasible Plan

Debtor’s Plan is infeasible under 11 U.S.C. § 1325(a)(6). Debtor’s net income is \$930.25. Schedule J, Dckt. 1. Debtor’s Plan payment is \$930.00. With an increase in the value of the vehicle and interest rate, Debtor would need to increase their monthly payment to Creditor. Based on Debtor’s net income, increasing a monthly payment is not feasible.

The court continues the hearing on the Objection to Confirmation to September 12, 2023 at 2:00 p.m. to be heard in conjunction with the continued Motion to Value Collateral and Secured Claim of Travis Credit Union.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Travis Credit Union (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to September 12, 2023 at 2:00 p.m.

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**The Court Posts This as a Tentative Ruling to Allow the Trustee
and Debtor to Confirm that the Plan Payments Provide for Adequate Funding
with the Stipulated Interest Rate on the Yolo Federal Credit Union Secured Claim.**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 18, 2023. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is overruled.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor's Plan relies on the Motion to Value Collateral of Yolo Federal Credit Union, set for hearing on August 8, 2023.

DEBTOR'S RESPONSE

Debtor filed a Response on August 8, 2023. Dckt. 40. Debtor states Yolo Federal Credit Union will be treated as a Class 2 Claim, the value of the collateral being \$14,550.00, with a dividend of \$306.00 per month until paid in full, with an interest rate of 9.5%.

August 8, 2023 Hearing

The court notes, the Motion to Value was granted on August 11, 2023. Order, Dckt. 44. The Motion to Value being Trustee's only objection, the Objection is overruled.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Raul Contreras Cardenas's ("Debtor") Chapter 13 Plan filed on June 5, 2023, as amended:

Creditor Yolo Federal Credit, holding a secured claim in a 2017 Dodge Challenger, shall be treated as a Class 2(B) Claim. Creditor's total claim is \$16,766.58, with the value of the collateral as \$14,550.00. Creditor shall be paid a monthly dividend of \$306.00 per month at an interest rate of 9.5% until paid in full.

is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**No Appearance by Yolo Federal Credit Union Required,
The Parties Having Stipulated to the Amendment Resolving
this Objection (Stipulation, Dckt. 39)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 17, 2023. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is overruled.</p>

Yolo Federal Credit ("Creditor") holding a secured claim opposed confirmation of the Plan on the basis that:

- A. Creditor did not approve the 3% interest rate;
- B. The Plan extended the final payment by 2 years.

DEBTOR AND CREDITOR'S STIPULATION

Debtor and Creditor filed a stipulation on July 28, 2023. Dckt. 39. The parties stipulate that Creditor's claim will be paid accordingly:

1. Class 2 Claim
2. Claim amount: \$16,766.58
3. Value of Collateral: \$14,550.00
4. Dividend: \$306.00 per month until paid in full
5. Interest rate: 9.5%

The parties' stipulation appears to resolve Creditor's objection. The Objection is overruled, and the Plan, as amended, is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Yolo Federal Credit ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Raul Contreras Cardenas's ("Debtor") Chapter 13 Plan filed on June 5, 2023, as amended:

Creditor Yolo Federal Credit, holding a secured claim in a 2017 Dodge Challenger, shall be treated as a Class 2(B) Claim. Creditor's total claim is \$16,766.58, with the value of the collateral as \$14,550.00. Creditor shall be paid a monthly dividend of \$306.00 per month at an interest rate of 9.5% until paid in full.

is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on July 26, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Class 1 exceeds the Plan payment.
- B. Debtor does not have enough net income to fund the Plan.

DISCUSSION

Trustee’s objections are well-taken.

Insufficient Plan Payments / Infeasible Plan

Trustee alleges that the Plan is not feasible:

1. Debtor's proposed monthly Plan payment is \$1,139.00, however, the Class 1 claims include \$1,000 per month for arrearages and \$1,462.84 per month for regular post-petition payments. Dckt. 3. Therefore, Debtor cannot comply with the Plan with only \$1,139.00 Plan payments.
2. Debtor's net income is only \$935.86, therefore, Debtor cannot fund the Plan. Dckt. 1.

11 U.S.C. § 1325(a)(6). Thus, the Plan may not be confirmed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 28, 2023. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

Deutsche Bank National Trust Company, as Trustee, for IndyMac Home Equity Mortgage Loan Asset-backed Trust, Series 2006-H1 as serviced by Specialized Loan Servicing LLC ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan states arrearages on Creditor's claim are \$60,000, when they are actually \$86,507.25.
- B. Debtor cannot fund the Plan because their net income is lower than the Plan payment.

Failure to Provide Evidence

Creditor's Objection making several factual assertions surrounding the extent of the debt owed to Creditor. However, no declaration of the Debtor was filed to support those assertions or authenticate the

exhibits provided. The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has not yet filed a proof of claim, nor has Creditor provided any evidence in the form of a declaration or exhibits demonstrating what the amount of pre-petition arrearages are. However, Creditor's Objection indicates Debtor's pre-petition arrearages are \$86,507.25. Objection, Dckt. 13. Debtor's Plan only proposes to cure \$60,000. Proposed Plan, Dckt. 3. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's net income is \$935.86, while the monthly Plan payment is \$1,139.00, therefore, Debtor cannot fund the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company, as Trustee, for IndyMac Home Equity Mortgage Loan Asset-backed Trust, Series 2006-H1 as serviced by Specialized Loan Servicing LLC ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, Michael Charles Clark and James David Ling ("Debtor") seeks confirmation of the Modified Plan to become current in Plan payments. Declaration, Dckt. 39. The Modified Plan provides \$43,852.59 to be paid through July 2023, followed by monthly payments of \$5,869.00 for the remainder of the Plan. Modified Plan, Dckt. 38. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 1, 2023. Dckt. 47. Trustee opposes confirmation of the Plan on the basis that:

1. Feasibility
 - a. The Plan terms are conflicting.

- b. Debtor does not adequately explain missed payments in February, March, and April.
 - c. Post-Petition Arrearages -
 - i. Debtor does not propose to cure post-petition arrearages.
 - d. Pre-petition Arrearages -
 - i. Debtor misstates the amount of mortgage arrearages.
 - e. Trustee calculates the percent to unsecured creditors will total 86.58%, while the Plan only proposes 30%.
2. Particularity
- a. The Motion does not cite applicable codes, and fails to cite the legal grounds for modifying.

DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

- 1. The Plan provides for monthly payments of \$5,869.00 for 60 months, which would cause Debtor to need to pay roughly \$18,000 more than what Debtor has paid. The nonstandard provisions, however, provides for different provisions, including: \$43,852.59 to be paid through July 2023, followed by monthly payments of \$5,869.00 for the remainder of the Plan. The terms are conflicting, therefore, Debtor cannot comply with the Plan.
- 2. Debtor does not adequately explain missed payments in February, March, and April. Therefore, the court is unable to assess the feasibility of the Plan and whether Debtor can remain current for the remainder of the Plan.
- 3. Post-Petition Arrearages - Debtor does not propose to cure post-petition arrearages owed to a Mr. Cooper.
- 4. Pre-petition Arrearages - Debtor misstates the amount of mortgage arrearages. Additionally, US Bank National Association, serviced by Nationstar Mortgage LLC, filed a secured claim. Therefore, it is unclear if Trustee should pay a Mr. Cooper, or Nationstar Mortgage LLC.
- 5. Trustee calculates the percent to unsecured creditors will total 86.58%, while the Plan only proposes 30%.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Motion fails Particularity Requirements

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. See *In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. See 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Debtor has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Debtor are:

- A. Debtor moves this court to confirm the First Modified Plan.
- B. The Motion is based on the facts in the Motion, the Joint Declaration of Debtor, and the Exhibits filed in support.
- C. Debtor submits the Motion in good faith and believe they can make all future payments in a timely manner.

Those “grounds” are merely a conclusion of law by Debtor. Presumably, Debtor believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions. Debtor provides no legal grounds, as required by Local Bankruptcy Rule 9014-1(d)(3)(A). Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt,

imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Michael Charles Clark and James David Ling ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

8.	<u>22-21906-E-13</u> <u>DPC-2</u>	MICHAEL CLARK AND JAMES LING Patricia Wilson	CONTINUED AMENDED MOTION TO DISMISS CASE 6-16-23 <u>[31]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 16, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Amended Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Amended Motion to Dismiss is XXXXXXXXXXXX

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Michael Clark and James Ling (“Debtor”) are delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on July 5, 2023. Dckt. 35. Debtor states they will file a Modified Plan prior to the July 19, 2023 hearing date.

Lack of Certificate of Service

Although Debtor timely filed an Opposition to Trustee’s motion, Debtor is required to provide a certificate of service to Trustee and all other parties in interest. Local Bankruptcy Rule 9014-1(d)(1). Debtor has failed to file a certificate of service with his Opposition to Trustee’s motion. It is not clear whether Trustee properly notice of Debtor’s Opposition.

DISCUSSION

Delinquent

Debtor is \$14,003.04 delinquent in plan payments, which represents multiple months of the \$5,548.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

By the time of the hearing, Debtor has filed a Modified Plan and Motion to Confirm. The Chapter 13 Trustee requested that this hearing be continued to be heard in conjunction with the Motion to Confirm.

AUGUST 22, 2023 HEARING

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Amended Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Amended Motion to Dismiss is **XXXXXXXXXX**

9 thru 10

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2023. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Nadia Zhiry (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly Plan payments of \$500 per month for the first 13 months, followed by \$2,000 per month for the remainder of the Plan. Amended Plan, Dckt. 289. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Over the 60 months of the Plan, this would total \$100,500 in plan payments by Debtor.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 1, 2023. Dckt. 300. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. The Plan may extend sixty (60) months, depending on when the Civil Action concludes.

- C. Debtor relies on payments from daughter, however, Daughter has not provided a declaration indicating they will be able to make Plan payments for sixty (60) months.
- D. Debtor's expenses appear low.
- E. The Plan appears underfunded if the receiver's claim remains allowed in the full amount.

RECEIVER'S JOINDER

The Receiver, Gerard F. Keena II ("Receiver"), filed a "Joinder" to Trustee's opposition on August 8, 2023. Dckt. 303. The court treats the "Joinder" as the Receiver's Opposition. The Receiver shares Trustee's concerns in that:

- 1. No information is provided to determine how long the Debtor's daughter intends to relocate at the property.
- 2. The rent is taxable income and there has been no discussion as to the anticipated amount of taxes paid on the rent.
- 3. There is no evidence as to the daughter's intention and ability to make the payments on a consistent basis.

DEBTOR'S RESPONSE

Debtor filed a response, Dckt. 305, on August 8, 2023, indicating:

- 1. Debtor intends to be current by the hearing date.
- 2. Debtor believes the Receiver fees will be determined on August 31, 2023, thus concluding the civil action and not making the case overextended.
- 3. Debtor submitted the declaration of Debtor's daughter as evidence to support the daughter's commitment to helping fund the Plan.

From the court's review of the docket, Debtor's daughter, Vera, submitted a declaration on April 24, 2023, in support of Debtor's First Amended Plan, indicating that they are willing and able to contribute \$1,500 per month. Dckt. 198. Vera does not indicate how long they intend to live at the property.

Debtor's daughter has not submitted a declaration in support of the current Motion indicating their ability to help fund the Second Amended Plan.

At the hearing, **XXXXXXXXXX**

- 4. Debtor has filed current amended schedules and assert that their expenses are lower than the average family of two.

The court notes, Debtor has only filed Amended Schedules I, no Amended Schedule J. Dckt. 292.

5. Debtor asserts that the Receiver's fees will be significantly less than the Proof of Claim.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,500 delinquent in Plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Trustee indicates Debtor may not be able to complete the Plan in sixty months, as the Civil Action is still pending and Debtor does not intend to pay the Receiver until after the conclusion of the "Civil Action." Debtor indicates the Civil Action will be concluded at the end of the month. At the hearing, **XXXXXXXXXX**

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor's daughter has not submitted a declaration in support of the current Motion and ability to fund the Second Amended Plan. Debtor's daughter only submitted a declaration for the First Amended Plan, which was denied confirmation.

Debtor has only filed an Amended Schedule I, and not an Amended Schedule J. Dckt. 292. Therefore, the court does not have an accurate picture of Debtor's expenses and financial reality.

Debtor leaves the court to consider her family expenses (for two adults, Debtor and her husband) as set forth in Supplemental Schedule J filed on April 10, 2023. Dckt. 192. The expenses which Debtor states under penalty of perjury are reasonable and necessary for her family unit of two adults consist of:

Mortgage	\$0.00	In the proposed Chapter 13 Plan Debtor's Daughter is to make monthly payments totaling \$1,750.00 to JPMorgan Chase Bank as Class 4 direct payments under the Plan.
Property Insurance	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.
Real Estate Taxes	\$0.00	Testimony that it is included in the monthly mortgage payments. Dec., ¶ 8; Dckt. 287.

Home Maintenance and Repairs	\$0.00	
Electricity, Heat, Natural Gas	\$200.00	This is for two residential properties on the Debtor's real property
Water, Sewer, Garbage	\$140.00	
Telephone, Internet, Cell Phone	\$50.00	
Food and Housekeeping Supplies	\$400.00	Assuming \$50 a month for housekeeping supplies, that leaves \$350 a month for food for the two adults. In a thirty day month, that allows for \$1.94 per meal per person for food (assuming three meals a day per person).
Clothing and Dry Cleaning	\$10.00	This allows each adult \$5 a month for clothing over the 60 months of the Plan. This is only \$60 per adult per year for clothing for five years.
Personal Care and Products	\$20.00	This allows each adult \$10 a month for personal care (such as haircuts and hair dressers) and products (such as lotions, creams, and the like).
Medical and Dental Expenses	\$25.00	This allows each adult \$12.50 a month for medical and dental co-pays, band-aids, creams, mouthwash, toothpaste and the like.
Transportation (gas, maintenance, and repairs)	\$100.00	<p>On Amended Schedule C, Debtor claims an exemption in a 2007 Kia Rondo with 165,000 miles on it. Dckt. 227. Debtor lists this as the only vehicle Debtor has an interest in on Amended Schedule A/B, stating it has a value of \$2,500.00. Dckt. 207.</p> <p>If one allows only \$35.00 a month for repairs for the next five years (which is only \$420 a year), there is \$65 for gas a month. Paying \$5.00 a gallon for gas, Debtor and her non-debtor Spouse can purchase only 13 gallons of gas a month. Assuming the 2007 vehicle gets 20 miles to the gallon, that would allow Debtor to drive only 65 miles a week, which is only 9 miles a day.</p>
Entertainment	\$10.00	This allows the Debtor and her non-debtor Spouse only \$5 a month for entertainment. Thus, for the five years of the Plan, Debtor and her non-debtor Spouse will have next to no entertainment in their lives.
Vehicle Insurance	\$50.00	For the 2007 vehicle that Debtor and her non-debtor Spouse can only drive for 9 miles a day, Debtor will pay \$600 a year in insurance.

Debtor's statement under penalty of perjury that Debtor and her non-debtor Spouse only have \$1,005 a month in necessary and reasonable expenses for the five years of the bankruptcy plan.

On the latest Supplemental I filed, Dckt. 292, Debtor states having the following Income:

Debtor's Social Security Income.....	\$505.00
Non-Debtor Spouse's SSI.....	\$1,000.00

Dckt. 292. Debtor also lists an additional \$1,500.00 in monthly rent paid by her daughter Vera and Debtor includes that in computing her monthly income. However, the Second Amended Plan requires an unidentified daughter of Debtor to make monthly payments of \$1,500.00 and \$250.00 to Class 4 Creditor JPMorgan Chase Bank, N.A. Second Amd Plan, ¶ 3.10; Dckt. 289. In her Declaration in support of the Motion to Confirm the Second Amended Plan, Debtor testifies that it is her daughter Luyba who is making the monthly mortgage payments, which include insurance and taxes. Dec., ¶ 8; Dckt. 287.

There appear to be some significantly understate expenses by Debtor. These include gas, maintenance, and repairs for Debtor 16 year old vehicle, maintenance and repair of Debtor's two residences, cell, internet, and video service for two adults, food, personal care, medical expenses, and entertainment. Rather than stating actual reasonable and necessary expenses, it appears that Supplemental Schedule J is a MAI (made as instructed) Schedule J to show a preconceived monthly net income.

The Receiver's Proof of Claim indicates a secured claim in the amount of \$183,585.18. Debtor insists the Civil Action will determine that the claim is for significantly less, and is hopefully that the Receiver's fees and costs will be only \$3,625.10. This is significantly less than Receiver's claim.

Looking at Amended Proof of Claim 1-2, the Receiver has filed it as a secured claim, with the lien being asserted on the Real Property in this case. Exhibit 1 to Amended Proof of Claim 1-2 is a copy of the order appointing the receiver that was recorded with the Sacramento County Recorder, which states a recording date of May 13, 2021. With respect to compensation, expenses, and a lien securing the amounts owing to the Receiver, the State Court Order Appointing Receiver includes:

3. The Receiver will be compensated for his services in the amount of \$250 per hour. The Receiver may use the Receiver's attorneys, paralegals, and other staff to assist him as necessary. Receiver's personnel will be compensated in the amounts outline in the billing rate schedule attached here to as Exhibit A. The Receiver will be reimbursed for the Receiver's reasonable costs and expenses incurred in connection with receivership activities, including expenses for those labor and service described in this Order, travel, copying, long distance telephone calls, and legal process. . . .

7. The Receiver may record a lien ("Receiver's Lien") against the Subject Properties to secure the repayment of the Receiver's Compensation, costs, and expenses in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver's Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.

In the General Statement of Claim that is attached to Amended Proof of Claim 1-2, the Receiver states that there were \$84,461.04 in fees and expenses incurred from his May 3, 2021 appointment (Date

on the State Court Order of Appointment) through July 29, 2021, and additional fees and expenses in the amount of \$88,124.14 incurred for the period July 30, 2021 through May 25, 2022 (the Chapter 13 filing date). Amended Proof of Claim No. 1-2 does not include amounts for fees and expenses incurred during this Chapter 13 Case.

The Order appointing the Receiver allows him to bill his time at \$250 an hour. There are similar hourly rates allowed for in-house counsel of the Receiver. There is not a hourly rate stated for any “out-house counsel” employed by the Receiver. If during the fourteen months of this Chapter 13 Case the Receiver and his counsel billed only ten hours a month, then each would be seeking compensation for 140 hours each, with an hourly rate of at least \$250.00 (this court does not know what hourly rate the State Court will allow for the “out-house counsel”). One hundred and forty hours times \$250 an hour equals \$19,600.00, each for the Receiver and the “out-house counsel,” which then totals \$39,200.00 in fees since the commencement of this Chapter 13 case.

It is not readily apparent how Debtor computes Receiver to have a claim of only \$3,625.10 at the outside. It is also unclear how the Receiver has incurred fees and expenses totaling \$183,585.18, plus additional fees and expenses during this case, in light the status of the property at issue when this case was filed.

Debtor has not provided a provision in the Plan as to what will occur if Receiver’s claim is determined to be for the full amount of \$183,585.18, plus post-Chapter 13 filing fees and costs, or any lesser reasonable amount allowed by the State Court judge in the Receivership Action. Without the court knowing the extent of Receiver’s claim, the Plan does not appear confirmable.

Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Nadia Zhiry (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXXXX

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Nadia Zhiry ("Debtor") has failed to file a new plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 3, 2023. Dckt. 272. Debtor states an amended plan will be filed. Debtor awaits the discharge of the Receiver in a civil action in Superior Court. *Id.* Debtor then plans to file a motion for final payment to Debtor's contractor, which will allow for the increase in payments to satisfy the claims in the Chapter 13 case, specifically the non-dischargeable claim of the City of Sacramento, California. *Id.*

Failure to Provide Evidence

Debtor's counsel filed an Opposition making several factual assertions. However, no declaration of the Debtor was filed to support those assertions or authenticate the exhibits provided. The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

FILING OF SECOND AMENDED PLAN

Debtor filed a Second Amended Plan and Motion to Confirm on July 12, 2023. Dckts. 285, 289. The court has reviewed the Motion to Confirm the Second Amended Plan and the Declaration in support filed by Debtor. Dckts. 287, 289. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The Court continues the hearing on the Motion to Dismiss for consideration in conjunction with Debtor's Motion to Confirm the proposed Second Amended Plan in this Bankruptcy Case.

August 22, 2023 Hearing

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxxxx**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2023. By the court’s calculation, 46 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Jude Anthony Dictado (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$12,800 to be paid as of the first three (3) months of the Plan, followed by monthly payments of \$7,650 for the remainder of the Plan. Amended Plan, Dckt. 52. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 27, 2023. Dckt. 60. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.

DISCUSSION

Delinquency

Debtor is \$15,300 delinquent in plan payments, which represents multiple months of the \$7,650 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor Jude Anthony Dictado (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2023. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtor, Marjorie Alcantara (“Debtor”) seeks confirmation of the Modified Plan because Debtor became delinquent in Plan payments after believing they completed their Plan. Declaration, Dckt. 119. The Modified Plan provides \$28,389.15 to be paid through month forty (40), followed by \$900 per month for the remainder of the Plan. Modified Plan, Dckt. 120. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 8, 2023. Dckt. 123. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. Debtor did not use the proper Certificate of Service form.

The court notes Debtor rectified this issue by filing a Supplemental Certificate of Service, in which they used the proper form. Dckt. 126.

DEBTOR'S REPLY

Debtor filed a Reply on August 11, 2023. Dckt. 127. Debtor states they are now current on Plan payments.

DISCUSSION

Delinquency

Debtor is \$900.00 delinquent in plan payments, which represents one month of the \$900.00 Plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

~~At the hearing, counsel for the Trustee confirmed that Debtor is current on the Plan payments and the Motion may be granted.~~

~~The Modified Plan does comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Marjorie Alcantara ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that Motion to Confirm the Modified Plan is granted, and the proposed Chapter 13 Plan is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2023. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is denied.</p>
--

The debtor, Brian Michael Carpenter (“Debtor”) seeks confirmation of the Modified Plan to become current on Plan payments. Debtor states they misunderstood the process of increasing Plan payments and fell behind. Declaration, Dckt. 35. The Modified Plan provides \$180.89 for 45 months, followed by \$314.00 per month for the remainder of the Plan. Modified Plan, Dckt. 36. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 27, 2023. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has overpaid.
- B. The Plan may not be in Debtor’s best efforts.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor has paid \$8,325.00 through month 45, not \$8,140.00. Debtor's overpayment indicates a failure to comply with the Plan.

Failure to Provide Disposable Income / Not Best Effort

In addition to the overruling amount state above, Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee states the Plan is not in Debtor's best efforts. It appears Debtor borrowed from their 401K in the amount of \$14,000 to purchase a vehicle. Debtor is making payments on the vehicle in the amount of \$186.00. It does not appear Debtor obtained the court's permission to purchase a vehicle using their retirement funds. Additionally, Trustee states they do not have sufficient evidence as to income from \$350 in income tax refunds or a \$100 card expense for spouse's credit card.

At the hearing, **XXXXXXXXXX**

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Brian Michael Carpenter ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 24, 2023. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is XXXXXXXXXX
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The debtor, Tammy Lynn Randolph (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$600.00 monthly payments for 24 months. Debtor further relies on the sale of two properties in complete the plan. Amended Plan, Dckt. 61. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on June 27, 2023. Dckt. 64. Trustee opposes confirmation of the Plan on the basis that:

1. The Motion to Confirm is not plead with particularity. Trustee has previously raised this issue.
2. Trustee cannot assess the feasibility of the plan

3. Debtor's amended Schedule J has removed property taxes from monthly expenses
4. Debtor has yet to amend Schedule A/B to identify any electronics and jewelry

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Movant has not provided any grounds, merely “requests” to the court. The insufficient statements made by Movant are:

1. Debtor has filed a Third Amended Plan requested is hereby made to the Court take Judicial Notice of said Third Amended Plan.
2. This motion seeks an Order Confirming Third Amended Plan.
3. The Debtor will pay \$600 monthly to Trustee for 24 months, then will sell their real property, and may sell one or more parcels in Shasta County.

Two times before the court denied Debtor’s Motion to Confirm based on particularity grounds. During the November 22, 2022 hearing on the Motion to Confirm Debtor’s First Amended Plan, the court addressed the grave pleading failures of Debtor’s Motion. Civil Minutes, Dckt. 34.

Debtor then filed a Second Amended Plan, in which the Trustee again raised concerns as to the Debtor failing the particularity requirement. Upon review of the Motion to Confirm the First Amended Plan

and the Second, the two Motions appear nearly identical, with only one paragraph added in the Second, stating:

5. The debtor will pay \$600.00 /monthly to the Trustee for up to 24 months . [sic] Debtor will sell property at 155 West Oak Street Ave , Hayfork , CA by December 31,2023 and pay off Plan . [sic] Debtor is also attempting to sell one or more Shasta County Parcels.

Debtor agreed that the Motion should be denied. Civil Minutes, Dckt. 55.

Here, the Motion to Confirm the Third Amended Chapter 13 Plan is nearly identical to the Second, with minor changes to the fifth paragraph:

5. The debtor will pay \$600.00 /monthly to the Trustee for up to 24 months . [sic] Debtor will sell property at 155 West Oak Street Ave , Hayfork , CA by December 31,2023 and pay off Plan . [sic] Debtor is also attempting to sell one or more Shasta County Parcel [sic]. **Ap#093-120-032 , Creditor [sic] shall be paid 100% of their allowed claims.**

Trustee states the Third Amended Plan

“does not provide any specific information that would be of use to the parties, such as a description of the Plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtor to a file the Second Amended Plan. Instead, the Debtor is requiring all parties, including the Court, the task of painstakingly reading and reviewing documents filed previously and drawing their own conclusions.”

Opposition, Dckt. 64. The court agrees. In fact, Trustee already raised these concerns in their prior Objection to Debtor’s Second Amended Plan. Dckt. 49.

It is unclear why, after numerous denials of Debtor’s Motion to Confirm, as well as numerous oppositions from Trustee, that Debtor continues submitting essentially the same Motion. The court has warned Debtor that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

Debtor’s repeat submissions are a grave concern with the court, and undoubtably sanctionable behavior.

DISCUSSION

Plan Lacks Sufficient Clarity

Trustee argues inability to assess the feasibility of the plan due to multiple shortcomings in Debtor’s filings. Specifically Trustee mentions:

1. Failure to identify nonstandard provisions
2. Vague plan to sell property to the extent Trustee is unsure which property is being sold
3. Plan does not identify which collateral is connected to monthly dividends
4. Plan fails to identify which property is subject to Tax Lien. Schedule A/B include six Shasta County Properties
5. Trustee is unclear was the collateral is for “Trinity Co Grants Debt Ltd Hayford”
6. Attorney’s fees are unclear.

Without a clear understanding of Debtor’s financial reality, and intentions of the Plan, the Plan is not confirmable. 11 U.S.C. § (a)(6).

Unexplained Reduction in Expenses

Trustee argues that the Plan is not feasible according to 11 U.S.C. § 1325(a)(6) because Debtor’s prior Schedule J lists \$300.00 for property taxes. Dckt. 25. Debtor filed Amended Schedules I and J on May 24, 2023, however, which indicate property tax of \$0.00. Dckt. 62.

Debtor’s declaration states their roommate is willing to pay the real estate taxes to Shasta and Trinity County totaling \$8,000. Dckt. 59. However, Debtor has failed to file a declaration of the roommate as evidence that they will give Debtor these funds. That is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

Insufficient Information

Debtor has supplied insufficient information relating to assets to assist the Chapter 13 Trustee in determining the value of the assets. Debtor fails to report the electronics and jewelry in their possession. Without this information, Trustee cannot assess the feasibility of the Plan.

DEBTOR’S MOTION TO REQUEST MORE TIME

On June 29, 2023, Debtor filed a “Request for More Time.” Dckt. 67. Debtor states their Counsel believes the issues raised can be incorporated in an order confirming the Amended Plan, together with a further declaration. Debtor requests a continuance of the Motion to August 22, 2023 at 2:00 p.m.

The court grants the continuance to afford Debtor and their Counsel more time to address Trustee’s and the court’s concerns.

DECLARATION OF DEBTOR

Debtor filed a Declaration on July 26, 2023. Dckt. 73. Debtor testifies under penalty of perjury to the following:

1. The non-standard provisions attached to the Plan should have been designated as part 7.
2. The only parcel in Trinity County is the residence at 155 West Oak Ave.
3. The tax lien for delinquent property taxes to Trinity County will be paid from the sale of the Property.
4. The Hayfork Property's net sale proceeds should be in excess of \$100,000 which would pay off Class 1, Class 2, and Class 7 creditors.
5. The Shasta County Property's net sale proceeds should be in excess of \$70,000 to pay Class 2 and 7 creditors.
6. Attorney's fees shall be paid from the sale of Hayfork or Shasta County.
7. Schedule B has been amended to list electronics. Debtor owns no jewelry.

DEBTOR'S BOYFRIEND'S DECLARATION

Debtor's boyfriend, Joseph Andrew Young Jr., filed a declaration on July 26, 2023. Dckt. 74. Mr. Young's declaration indicates they are assisting Debtor in paying insurance and property taxes for the Shasta and Trinity County properties.

AUGUST 22, 2023 HEARING

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Tammy Randolph ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is **XXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2023. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is granted.</p>

The debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew (“Debtor”) seeks confirmation of the Modified Plan to become current on Plan payments. Debtor states they had several unexpected expenses that resulted in Debtor becoming delinquent in Plan payments. Declaration, Dckt. 112. The Modified Plan provides \$98,682.34 through June 2023 followed by Plan payments of \$4,985.00 per month for the remainder of the Plan. Modified Plan, Dckt. 114. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on July 28, 2023. Dckt. 120. Trustee opposes confirmation of the Plan on the basis that:

- A. Delinquent - Debtor is delinquent \$700 in Plan payments.
- B. Class 2 Claim - Penny Mac Loan Services may not have been paid, as the Plan suggests.

DEBTOR'S REPLY

Debtor filed a filed a Reply on August 15, 2023. Dckt. 123. Debtor states:

1. Debtor is current on Plan payments.
2. Debtor acknowledges Penny Mac has not been paid and requests this matter be addressed in the Order Confirming.

At the hearing, ~~XXXXXXXXXX~~

~~_____ The Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 12, 2023, as amended:~~

~~_____ Class 2(a) claim of Penny Mac Loan Servicing shall receive a monthly dividend of \$20.00 per month.~~

~~_____ is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

16 thru 17

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 17, 2023. By the court's calculation, 66 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, Joanne Aspiras Davis ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for \$2,800 through July 17, 2023, followed by Plan payments of \$661.87 per month for the remainder of the Plan. Amended Plan, Dckt. 96. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 27, 2023. Dckt. 102. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is \$661.87 delinquent in Plan payments.

DISCUSSION

Delinquent

Debtor is \$661.87 delinquent in plan payments, which represents multiple months of the \$1,314.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Joanne Aspiras Davis (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 27, 2023. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Dismiss is XXXXXXXXXX

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Joanne Davis ("Debtor"), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

DISCUSSION

Delinquent

Debtor is \$3,770.00 delinquent in plan payments, which represents multiple months of the \$1,314.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 25, 2023. Order, Dckt. 88. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the July 19, 2023 hearing, counsel for the Debtor reported that an Amended Plan and Motion to Confirm were filed on July 17, 2023, with the confirmation hearing set for August 22, 2023. The Trustee requested the court continue the hearing on the Motion to Dismiss and be heard in conjunction with the Motion to Confirm.

August 22, 2023 Hearing

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, attorneys of record, and Office of the United States Trustee on July 21, 2023. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Objection to Notice of Mortgage Payment Change is
continued to October 3, 2023 at 2:00 p.m.**

STIPULATION TO CONTINUE HEARING

On August 11, 2023, Derek L. Wolf ("Debtor") and US Bank, National Association ("Creditor") filed a Stipulation to continue the hearing on Debtor's Objection to Mortgage Payment Change to October 3, 2023 at 2:00 p.m. The court construes the document to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) and Stipulation to continue the hearing.

Federal Rule of Bankruptcy Procedure 9013 requires the filing of a motion or application when requesting an order from the court. Once a matter is set to the court's calendar, it may be continued by the court, not unilaterally by the parties. See, 8 Moore's Federal Practice - Civil § 40.02[5], L.B.R. 9014-1(j).

Upon consideration of the *Ex Parte Motion* and Stipulation, the court continues the hearing on the Objection to Plan to October 3, 2023 at 2:00 p.m.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Mortgage Payment Change filed by Derek L. Wolf (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Mortgage Payment Change is continued to October 3, 2023 at 2:00 p.m. in Courtroom 33.

19. [23-22641](#)-E-13

ALLAN WEST

**MOTION TO EXTEND AUTOMATIC
STAY**

[DWL-1](#)

Bruce Dwiggins

8-8-23 [8]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2023. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

-----.

<p>The Motion to Extend the Automatic Stay is granted.</p>

Allan Frank West (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 22-21346) was dismissed on July 28, 2023,

after Debtor failed to modify their Plan. *See* Civil Minutes, Bankr. E.D. Cal. No. 22-21346, Dckt. 54, July 25, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor may not have been properly advised of their rights and responsibilities to the court and Trustee in the prior case. This may have contributed to the dismissal of Debtor's case.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Allan Frank West (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

20. [23-20542-E-13](#)
[MAC-1](#)

SHARON JACKSON
Marc Caraska

MOTION TO CONFIRM PLAN
7-5-23 [\[45\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2023. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is XXXXXXX

The debtor, Sharon Ann Jackson (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for \$2,011.59 per month for 4 months followed by \$2,208.11 per month for the

remainder of the Plan. Amended Plan, Dckt. 48. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 2, 2023. Dckt. 59. Trustee opposes confirmation of the Plan on the basis that:

- A. Class 1 Creditor Bosco Credit LLC appears to be misclassified.

DISCUSSION

Misclassified Claim

Trustee states Bosco Credit LLC should be either a Class 2 claim or the ongoing payment should be limited to \$565.85. This is due to the claim of Bosco Credit LLC totaling \$101,100.05, while of that, \$99,700.08 are arrearages. Thus, only \$1,399.97 appears remaining due on the principal balance.

The Plan proposes monthly payments to Bosco in the amount of:

Arrearage Dividend: \$1,987.30

Post-Petition Monthly Payment: \$452.34

Debtor will pay off their principal balance in roughly 4 months. Upon review of the Proof of Claim, it appears Debtor entered into the agreement on April 2, 2007. Proof of Claim 3-1. The agreement, it appears, had a draw period of 10 years and a repayment period of 15 years. Thus, it seems the maturity date of the loan would be April 2, 2032.

However, given the balance on the claim, and amount of arrearage payments, it appears the final payment, under 11 U.S.C. § 1322(c)(2), may be within the next few months. At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Sharon Ann Jackson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is **XXXXXXXXXX**

21 thru 22

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 26, 2023. By the court's calculation, 57 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

1. Debtor is using nonstandard provisions that don't appear to comply with the approved Ensminger Plan Provisions approved by the court.
2. Debtor has failed to provide business documents.
3. Debtor is a serial filer.
4. Debtor is delinquent in Plan payments.

DISCUSSION

Trustee's objections are well-taken.

Nonstandard Provisions

Debtor failed to check the box in § 1.02 indicating there are nonstandard provisions. However, Debtor provides "Additional Provisions." These provisions mimic the court's approved "Ensminger Provisions," however, Debtor adds the additional information: "Debtor is presently pending a Grant Application California Mortgage Relied Grant in the sum of \$80,000.00, to be paid directly to Creditor's Secured Claim." The Trustee is not clear how this provision affects the claim and notes that it is not part of the approved Ensminger Plan Provisions.

The court notes, Creditor Deutsche Bank filed an Objection to Confirmation, indicating that the Plan fails to cure the default on the claim. Dckt. 31. Creditor's objection makes no mention of a loan modification agreement. Therefore, it is unclear if Creditor will approve, or be willing to enter into, a loan modification.

At the hearing, **XXXXXXXXXX**

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with completed business documents including:

- A. Questionnaire (Debtor provided an incomplete questionnaire),
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Serial Filer

Trustee objects on the grounds that Debtor has had seven (7) prior bankruptcy cases filed since 2016. Trustee does not provide legal grounds as to why serial filing is grounds for denying confirmation of a Plan. However, Debtor's multiple bankruptcy cases does cause the court to have concerns regarding the feasibility of the Plan

Delinquency

Debtor is \$3,850.00 delinquent in plan payments, which represents one month of the \$3,850.00 plan Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice on July 26, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is overruled.</p>

Deutsche Bank National Trust Company (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor fails to cure all arrearages.
- B. Debtor will not be able to make Plan payments.

Failure to Provide Evidence

Creditor’s Objection making several factual assertions surrounding the extent of the debt owed to Creditor. However, no declaration of the Debtor was filed to support those assertions or authenticate the exhibits provided. The court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also

affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has not yet filed a proof of claim, nor have they provided evidence to support the amount of their arrearages. However, Creditor's Objection asserts \$227,179.57. The Plan only proposes to cure \$181,000.00 in arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). If Creditor files a Proof of Claim supporting the \$227,179.57 in arrearages, the Plan cannot be confirmed because it fails to provide for the full payment of arrearages.^{FN.1.}

FN. 1. The court does note that it is curious that such a sophisticated creditor such as Deutsche Bank National Trust Company, as Trustee, and its experienced counsel fail to provide evidence in support of the factual allegations and have failed to file a Proof of Claim for such a substantial claim in this Bankruptcy Case that was filed sixty-nine (69) days prior to the hearing on this objection.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's net income is \$3,950, while their Plan payment is \$3,850. Schedule I, Dckt. 12; Plan, Dckt. 10. Thus, Debtor's net income allows the Plan payment to increase by only \$100. Thus, if Creditor's arrearages are over \$40,000 more than what Debtor estimates, Debtor will not be able to properly fund the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

However, Creditor has failed to provide the court with any evidence that the arrearage is any higher than stated by the Debtor in the Plan.

Creditor having failed to provide evidence in support of the Objection, the Objection is overruled.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Deutsche Bank National Trust Company ("Creditor") holding a secured claim having been presented to the court,

and upon review of the pleadings, no evidence having been provided by Creditor, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled.

23. [23-21846-E-13](#)
[DPC-1](#)

JASON HAGBERG
Mark Briden

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
7-19-23 [\[12\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 19, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor failed to appear at the § 341 Meeting of Creditors.
- B. The Plan is overextended.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee's August 17, 2023 Docket Entry Report states that the continued First Meeting was conducted on August 17, 2023, Debtor and Debtor's counsel appeared, and the First Meeting has been concluded.

This ground for Objecting to Confirmation has been resolved, though the Trustee may need some additional time to consider information provided at the August 17, 2023 First Meeting of Creditors.

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 112 months due to the scheduled debts. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

24 thru 25

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 18, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, Terry Lee Thompson and Melissa Kay Mast ("Debtor") seeks confirmation of the Modified Plan to catch up on Plan payments becomes Debtor fell behind due to the financial hardship of the pandemic. Declaration, Dckt. 62. The Modified Plan provides sporadic Plan payments through July 2023, followed by \$1,450 per month for the remainder of the Plan. Modified Plan, Dckt. 60. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 8, 2023. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan proposes 20% to unsecured claims, when Trustee calculates the Plan will pay 100%.

- B. Debtor has unexplained changes on their Schedule J.
- C. No application for attorney's fees has been filed, and Debtor is seeking a total of \$9,000 in attorney's fees.
- D. Debtor does not provide adequate grounds for their basis for modification.

DISCUSSION

Dividend to Unsecured Claims

Trustee calculates unsecured claims will receive a 100% dividend. The Plan should be amended to more accurately reflect the dividend to unsecured claims.

Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor filed two Amended Schedule J's within a few weeks, Dckts. 54, 56. Compared to Debtor's First Amended Schedule J, Dckt. 54, Debtor's Second Amended Schedule J, Dckt., increases food, clothing, personal care, transportation, and entertainment by \$786.00 while decreasing the amount budgeted for a car payment from \$786.00 to \$0.00. It is unclear if Debtor needs these increased expenses, or if \$786.00 is an unnecessary expense that Debtor is trying to keep for themselves.

Additionally, Debtor only states they suffered hardship from the pandemic. Debtor does not adequately state what the struggles were and how they were affected. Debtor should provide more detail in order for the court to determine that modification is proper.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan indicates they will pay their attorney's fees \$9,000 by filing and serving a motion in accordance with 11 U.S.C. § § 329, 330. Debtor's original Plan had Debtor complying with the no look fees under Local Bankruptcy Rule 2016-1(c). Dckt. 6. Debtor has not filed an application to approve attorney's fees. Additionally, \$9,000 for fees appears higher than a normal Chapter 13 case. It is not clear why Debtor seeks to pay their attorney significantly more than what the typical case is, especially when Debtor's attorney originally opted for the No-Look fees, which would have yielded only \$4,000. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Terry Lee Thompson and Melissa Kay Mast (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 10, 2023. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is XXXXXXXXXX

PRIOR HEARING AND ORDER

This case was dismissed on May 15, 2023, Dckt. 40. The civil minutes from the hearing on the Motion to Dismiss are below:

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Terry Lee Thompson and Melissa Kay Mast ("Debtor") is delinquent in Plan payments.

Delinquent

Debtor is \$7,184.11 delinquent in plan payments, which represents multiple months of the \$1,450.00 plan payment. Before the hearing, another plan payment

will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

Civil Minutes, Dckt. 39.

ORDER VACATING MOTION TO DISMISS

On May 24, 2023, the court granted Debtor's Motion to Vacate the Order Dismissing Case. Dckt. 47. The court reset Trustee's Motion to Dismiss for July 19, 2023.

DEBTOR'S OPPOSITION TO THE RESET MOTION TO DISMISS

Debtor filed an Opposition on July 5, 2023. Dckt. 52.

Debtor states:

1. They will file amended Schedules I & J to show plan feasibility prior to hearing

On July 6, 2023, Debtor filed Amended Schedules I & J indicating Debtor's combined monthly income is \$12,306.19, and Debtor's combined expenses include \$10,856.19. Dckt 54. Debtor calculates their monthly net income as \$1,450.00. *Id.*

2. They will file a Motion to Confirm Second Modified Plan prior to hearing.
3. They will be current under the second modified plan as of the date of hearing.

DELINQUENT

Debtor is \$7,184.11 delinquent in plan payments, which represents multiple months of the \$1,450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).I

By the time of the hearing, Debtor has filed a Modified Plan and Motion to Confirm. The Chapter 13 Trustee requested that this hearing be continued to be heard in conjunction with the Motion to Confirm.

DEBTOR'S REPLY

Debtor filed a Reply on August 8, 2023. Dckt. 70. Debtor states they have filed Amended Schedules I & J, Dckts. 54, 56, and a Motion to Confirm Modified Plan, Dckt. 58. Debtor states the Plan is now current.

AUGUST 22, 2023 HEARING

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXXXXX**

26. [23-21552-E-13](#)
[PLG-1](#)

RONALD RATLIFF
Rabin Pournazarian

MOTION TO CONFIRM PLAN
7-11-23 [22]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 11, 2023. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.
--

The debtor, Ronald LeRoy Ratliff (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly payments of \$5,078.00 for the entirety of the Plan, with 100% to unsecured claims. Amended Plan, Dckt. 24. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 2, 2023. Dckt. 34. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan is overextended.
- B. Community property is not listed.

DISCUSSION

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 71 months due to US Bank filing Claim 6, as an unsecured claim in the amount of \$41,115.71. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Community Property Not Listed

Debtor may have community property in the Philippines. Debtor’s Motion, Declaration, and Schedules are silent regarding this Property. If Debtor is omitting this asset, there may be other necessary expenses that may impact Debtor’s ability to make Plan payments. As stated in this court’s Civil Minutes from July 25, 2023, for the Trustee’s Objection to Confirmation, the evidence presented by the Trustee is that Debtor admitted to that his non-filing spouse has property in the Philippines. Civ. Minutes; Dckt. 30. *See* Declaration of Teryl Wegemer, paralegal working for the Chapter 13 Trustee, ¶ 6; Dckt. 20.

Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Ronald LeRoy Ratliff (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

27. [23-21971-E-13](#)
[DPC-1](#)

ANTHONY FAULCONER
Mikalah Liviakis

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK**
7-26-23 [\[18\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 26, 2023. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

The Objection to Confirmation of Plan is sustained.
--

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor failed to provide their Social Security Number to Trustee.

DISCUSSION

Trustee’s objections are well-taken.

Failure to Provide Social Security Number

Debtor has failed to submit proof of their social security number to Trustee as required by Federal Rules of Bankruptcy Procedure 4002(b)(1)(B). Attempting to confirm a plan while failing to provide proof of identification represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee’s August 17, 2023 Docket Entry Report states that neither the Debtor nor counsel for the Debtor appeared at the continued First Meeting of Creditors on August 17, 2023, but that such meeting was concluded. It is not clear from the Docket Entry Report whether they did not appear because the First Meeting was continued to have the Social Security information provided and such was done prior to the continued First Meeting date, or that Debtor has abandoned prosecution of this Bankruptcy Case.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2023. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, (“Debtor”), seeks confirmation of the Amended Plan. The Amended Plan provides for Brief Summary of Proposed Plan. Amended Plan, Dckt. xx. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 2, 2023. Dckt. 51. Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is Delinquent.
2. Trustee is missing information regarding Debtor’s financial reality.

DISCUSSION

Delinquency

Debtor is \$2,765.00 delinquent in plan payments, which represents less than one month of the \$5,959.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

1. **Form 122C-1 Not Amended** - Form 122C-1 indicates Debtor's income is \$12,020.87, while Debtor's Amended Schedule I and J indicates Debtor's income is \$13,444.37. Debtor's Form 122C-1 should be amended to accurately reflect Debtor's income.
2. **Schedule A/B Not Amended** - Debtor's Schedules A/B have still not been amended, although Trustee addressed this in their prior objection. *See* Objection, Dckt. 20 at 3.
3. **Statement of Financial Affairs** - Debtor has not amended their Statement of Financial Affairs when Trustee has addressed concerns regarding gambling transactions. *See* Civil Minutes, Dckt. 29.
4. **Amended Schedule I** - Debtor has still not listed any 401(k) loans or employee loans in the Amended Schedule I. Dckt. 42. This was addressed at the hearing on Trustee's prior Objection to Confirmation. Civil Minutes, Dckt. 29.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Gregory Wayne French and Cho Yon French ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

FINAL RULINGS

29. [23-21853-E-13](#)
[BLG-1](#)

ANDRE SHAVERS
Chad Johnson

MOTION TO VALUE COLLATERAL OF
U.S. SMALL BUSINESS
ADMINISTRATION
7-25-23 [\[27\]](#)

29 thru 30

Final Ruling: No appearance at the August 22, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 25, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of Small Business Association is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion filed by Andre Shavers ("Debtor") to value the secured claim of the Small Business Association ("SBA" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 29. Debtor is the owner of various personal property items, including:

1. 2016 Ford Transit
 - a. Value: \$18,380.00
2. 2018 Honda Accord

- a. Value: \$23,312.00
- 3. Household Goods & Furniture
 - a. Value: \$2,500.00
- 4. Electronics
 - a. Value: \$700.00
- 5. Clothing
 - a. Value: \$300.00
- 6. Jewelry
 - a. Value: \$1,300.00
- 7. Deposits of Money
 - a. Value: \$1,855.69
- 8. JLL Retirement Plan
 - a. Value: \$12,084.24

(“Property”). Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor claims after taking into account the liens on the two vehicles, the total equity in the personal property is \$38,233.70.

TRUSTEE’S NONOPPOSITION

The Chapter 7 Trustee, David P. Cusick (“Trustee”) filed a nonopposition on August 4, 2023. Dckt. 39.

DISCUSSION

Creditor filed Proof of Claim No. 9-1 on June 30, 2023. The Proof of Claim asserts that \$203,344.54 is secured by the Property, that \$0.00 is a priority unsecured claim, and that \$0.00 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the SBA makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor’s assets and then bifurcates the secured and unsecured portions of its claim. The SBA appears to have followed that procedure here.

Upon review of the evidence and the statement of the secured claim for the SBA in Proof of Claim No. 9-1, the court determines the value of the secured claim to be \$38,233.70, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Andre Shavers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the United States Small Business Association (“SBA” or “Creditor”) secured by personal property assets described as:

1. 2016 Ford Transit
2. 2018 Honda Accord
3. Household Goods & Furniture
4. Electronics
5. Clothing
6. Jewelry
7. Deposits of Money
8. JLL Retirement Plan

(“Property”) is determined to be a secured claim in the amount of \$38,233.70, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

Final Ruling: No appearance at the August 22, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 25, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is granted, and Creditor's secured claim is determined to have a value of \$0.00.

The Motion filed by Andre Shavers ("Debtor") to value the secured claim of the Internal Revenue Service ("IRS" or "Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 34. Debtor is the owner of various personal property items, including:

1. 2016 Ford Transit
 - a. Value: \$18,380.00
2. 2018 Honda Accord
 - a. Value: \$23,312.00
3. Household Goods & Furniture

- a. Value: \$2,500.00
- 4. Electronics
 - a. Value: \$700.00
- 5. Clothing
 - a. Value: \$300.00
- 6. Jewelry
 - a. Value: \$1,300.00
- 7. Deposits of Money
 - a. Value: \$1,855.69
- 8. JLL Retirement Plan
 - a. Value: \$12,084.24

(“Property”). Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor claims after taking into account the liens on the two vehicles, the total equity in the personal property is \$38,233.70.

TRUSTEE’S NONOPPOSITION

The Chapter 7 Trustee, David P. Cusick (“Trustee”) filed a nonopposition on August 4, 2023. Dckt. 41.

DISCUSSION

Creditor filed Proof of Claim No. 8-1 on June 30, 2023. The Proof of Claim asserts that \$18,380.00 is secured by the Property, that \$16,557.15 is a priority unsecured claim, and that \$6,563.74 is a general unsecured claim.

As has been disclosed, in filing proofs of claim, the IRS makes its own calculation for purposes of 11 U.S.C. § 506(a) based upon Debtor’s assets and then bifurcates the secured and unsecured portions of its claim. The IRS appears to have followed that procedure here.

Debtor claims the Small Business Association has a priority lien against the Property. The SBA filed their UCC-1 on April 25, 2022, Proof of Claim 9-1, while Creditor IRS did not record a lien until February 15, 2023, Proof of Claim 8-1. Upon review of the evidence and the statement of the secured claim for the IRS in Proof of Claim No. 8-1, the court determines the value of the secured claim to be \$0.00, with the balance to be treated as unsecured claims (whether priority or general unsecured claims).

The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Andre Shavers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the Internal Revenue Service (“IRS” or “Creditor”) secured by personal property assets described as:

1. 2016 Ford Transit
2. 2018 Honda Accord
3. Household Goods & Furniture
4. Electronics
5. Clothing
6. Jewelry
7. Deposits of Money
8. JLL Retirement Plan

(“Property”) is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is an unsecured claim (whether priority or general unsecured claim) to be paid through the confirmed bankruptcy plan.

Final Ruling: No appearance at the August 22, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 17, 2023. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.
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The debtor, Vernon Lee Davis ("Debtor") seeks confirmation of the Modified Plan to pay the Internal Revenue Service according to their correct classification as creditor. Declaration, Dckt. 35. The Modified Plan provides \$1,998.00 to be paid through July 17, 2023, followed by \$1,176.25 per month for the remainder of the Plan. Modified Plan, Dckt. 34. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on August 1, 2023. Dckt. 40. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Vernon Lee Davis (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on July 17, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 22, 2023 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 12, 2023. By the court's calculation, 71 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

On Proof of Claim 1-1 filed for Piedmont Capital Management, LLC (the "Creditor"), it states that notices and payments to Creditor are to be sent to McKenna Brink Signorotti LLP. Proof of Claim 1-1 is signed by Tanner D. Brink, as the Attorney for Creditor, with McKenna Brink Signorotti LLP. POC 1-1, Part 3. Federal Rule of Bankruptcy Procedure 3007(a)(2) states that service of the Objection to Claim shall be served on the Creditor by First Class Mail sent to the person designated on the proof of claim to receive notices. As set forth in the Certificate of Service, Creditor was served by First Class Mail sent to Tanner Brink, Esq., at McKenna, Brink Signorotti, LLP, at the address listed on Proof of Claim 1-1.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 1-1 of Piedmont Capital Management, LLC is sustained, and the claim is determined to be a general unsecured claim.

Michelle Anne Rau, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Piedmont Capital Management, LLC ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$103,354.48. Objector asserts that they own no real property, thus, the Abstract is not secured. Objector objects that the claim is unsecured and requests it is treated as a Class 7 non-priority unsecured claim.

TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed a nonopposition on July 25, 2023. Dckt. 29. Trustee asserts that it does not appear that Debtor has any legal or equitable interest in any residence, building, land, or similar property. Thus, Trustee requests the court sustain the objection.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

From the court's review, it does not appear Debtor owns or has a legal or equitable interest in any real property. Thus, Creditor's claim, perfected by an abstract of judgment, is unsecured.

Based on the evidence before the court, Creditor's claim is determined to be unsecured in its entirety, and shall be treated as a general unsecured claim. The Objection to the Proof of Claim is sustained.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Piedmont Capital Management, LLC ("Creditor"), filed in this case by Michelle Anne Rau, Chapter 13 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 1-1 of Creditor is sustained, and the claim is disallowed as a secured claim, and allowed only as a general unsecured claim in its entirety.

Final Ruling: No appearance at the August 22, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 5, 2023. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Objection to Discharge is sustained.

David P. Cusick, the Chapter 13 Trustee, (“Objector”) objects to Miguel Angel Luna and Teresita Jesus Luna’s (“Debtor”) discharge in this case. Objector argues that Debtor is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on June 28, 2022. Case No. 22-21599. Debtor received a discharge on April 18, 2023. Case No. 22-21599, Dckt. 54.

The instant case was filed under Chapter 13 on May 27, 2023.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge “in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.” 11 U.S.C. § 1328(f)(1).

Here, Debtor received a discharge under 11 U.S.C. § 727 on April 18, 2023, which is less than four years preceding the date of the filing of the instant case. Case No. 22-21599, Dckt. 54. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 23-21722), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Discharge filed by David P. Cusick, the Chapter 13 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of the instant case, Case No. 23-21722, the case shall be closed without the entry of a discharge.